

### **REMARKS**

Claims 1-24 are pending in the present application. Claims 1, 7, 9, 10, 11, 12, 17, 19, 20 and 22 have been amended by this response. No claims have been added or cancelled. Applicant respectfully requests reconsideration by the Examiner in light of the following remarks.

#### **I. Rejection under 35 USC § 112**

Claims 1-24 have been rejected under 35 USC § 112, first paragraph, for allegedly failing to comply with the written description requirement. Specifically, it was alleged that the subject matter of "absence of a pacing threshold search that comprises delivering pacing pulses" in claims 1, 11, 12, and 22 cannot be found described in the specification.

Claims 1, 11, and 12 have been amended to clarify that the indicators are monitored in the absence of a pacing threshold of the type that comprises delivering pacing pulses. Support for the amendments can be found, for example, at paragraph 60.

Claim 22 has been amended to clarify that the indicator is associated with a compromised ability of the microprocessor to perform a pacing threshold search of the type that comprises delivery of the pacing pulses. Support for the amendment is inherent and can also be found in the specification, for example, at paragraph 13.

Accordingly, Applicant respectfully requests withdrawal of the rejection of claims 1-24 under 35 USC § 112, first paragraph.

Claims 1-24 are rejected under 35 USC § 112, second paragraph. Specifically, it was alleged that the subject matter of “delivering of pacing pulses” in claims 1, 11, 12, and 22 is indefinite.

The claims have been amended as indicated above with respect to the first paragraph and as such the rejection is believed to be obviated.

Accordingly, Applicant respectfully requests withdrawal of the rejection of claims 1-24 under 35 USC § 112, second paragraph.

## **II. Rejection under 35 USC § 103**

Claims 1, 6, 11-16, 21 and 22 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Jorgenson et al. (US 6,317,633, hereinafter “Jorgenson”) in view of Schloss (US 6,456,882, hereinafter “Schloss”). Applicant respectfully traverses the rejection.

None of the applied references, alone or in combination, teaches or suggests increasing a safety factor used in setting a pacing pulse output energy if an indicator of increased pacing threshold is detected in the absence of a pacing threshold search result as stated more fully, for example, in independent claims 1, 11, 12 and 22.

Although it is true that Jorgenson and Schloss both disclose monitoring for increasing pacing thresholds, the determination in both references is based on the results of a pacing threshold test. The rejection fails for at least this reason. In Jorgenson, the lead status monitor (LSM) test requires evaluation of loss of capture (LOC) values which are obtained from a pacing threshold test. *See* col. 5, lines 56-65. Similarly, in Schloss, monitoring of the increasing pacing thresholds is based upon the frequency of capture which is determined from threshold testing. *See* col. 3, lines 2-9.

In addition, neither Jorgenson nor Schloss disclose increasing the safety factor based on an indication of increased pacing threshold as stated, for example, in independent claims 1, 11, 12 and 22. In acknowledgment of the deficiencies of Jorgenson, Schloss was applied for the purported disclosure of increasing a safety factor if an indicator of increased pacing threshold is detected. However, the reliance on Schloss overlooks the fact that the increase in the safety margin value is based on the LOC (loss of capture) performance value exceeding the threshold value. See col. 12, lines 27-30. As such, the purported combination would still fail to yield increasing a safety factor used in setting a pacing pulse output energy if an indicator of increased pacing threshold is detected in the absence of a conventional pacing threshold search of the type that comprises delivery of pacing pulses

Accordingly, Applicant respectfully requests withdrawal of the rejection of claims 1, 6, 11-16, 21 and 22 under 35 U.S.C. § 103(a) as being unpatentable over Jorgenson in view of Schloss.

Claims 7-10 and 17-20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Jorgenson in view of Schloss and further in view of Sloman (EP 1 136 098 A2, hereinafter "Sloman"). Applicant respectfully traverses these rejections.

Claims 7, 9, 10, 17 19 and 20 have been rewritten as independent claims but are still directed to the specific subject matter of the claims as previously submitted.

In the rejections, Jorgenson and Schloss are the primary references and are applied in the same manner as applied against claims 1 and 12. Sloman does not remedy the deficiencies of these references.

Accordingly, for this reason, Applicant respectfully requests withdrawal of the rejection of claims 7-10 and 17-20 under 35 U.S.C. § 103(a) as being unpatentable over Jorgenson in view of Schloss and further in view of Sloman.

Further, Sloman does not disclose that the specific occurrences monitored for in claims 7 – 10 and 17 – 20 are indicators of possible loss of capture or should be used to trigger an increase in the safety factor associated with the pacing pulses. While Sloman monitors for the occurrences listed in the claims, it does so for different reasons. This teaching is also absent from Jorgenson and of Schloss. For this reason, even if claims 1 and 12 are deemed obvious over Jorgenson in view of Schloss, claims 7 – 10 and 17 – 20 are believed patentable over Jorgenson in view of Schloss and Sloman. All three references lack the same teachings relevant to claims 7 – 10 and 17 – 20.

Accordingly, for at this reason as well, Applicant respectfully requests withdrawal of the rejection of claims 7-10 and 17-20 under 35 U.S.C. § 103(a) as being unpatentable over Jorgenson in view of Schloss and further in view of Sloman.

### **III. Conclusion**

In view of the foregoing, it is submitted that this application is in condition for allowance. Favorable consideration and prompt allowance of the application are respectfully requested.

Should any issues remain outstanding, the Examiner is urged to telephone the undersigned to expedite prosecution. The Commissioner is authorized to charge any deficiencies and credit any overpayments to Deposit Account No. 13-2546.

Respectfully submitted,

January 14, 2010  
Date

/Reed A. Duthler/  
Reed A. Duthler  
Reg. No. 30,626  
(763) 526-1564  
Customer No. 27581